

Memorandum
To: Air Permit Managers
Cc: Chuck Turner, Frank Burbank
From: John Reinhardt, Title V Coordinator
Subject: Title V Boilerplate Changes
Date: June 2, 2003

Introduction

This memo is being written to inform the permit writers of changes that have been made to the Title V and Statement of basis templates. These changes should be included in all Title V permits that have not been public noticed and in all other Title V permits when reopened, amended, modified or renewed.

The new templates are attached and can also be found on DEQNET2 @ the following:

Document&Forms\air\air_permitting>manuals\Title5_Manual\revised_titleV_BP_060203
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Statement of Basis Changes

The statement of basis has been changed. The citation explanation has been shortened and made optional. This change is based on comments.

Compliance Status

The statement of basis has new compliance status language. The new language better reflects the way the Department makes compliance evaluations. The new language is listed below:

COMPLIANCE STATUS

A full compliance evaluation of this facility, including a site visit, has been conducted. In addition, all reports and other data required by permit conditions or regulations, which are submitted to DEQ, are evaluated for compliance. Based on these compliance evaluations, [the facility has not been found to be in violation of any state or federal applicable requirements at this time.] OR [the facility was issued a (Warning Letter AND OR Notice of Violation) on (date) alleging noncompliance with (identify underlying permit condition or applicable requirement).] OR [the facility and DEQ have entered into a Consent Order to resolve a Notice of Violation on (date) alleging noncompliance with (identify underlying permit condition or applicable requirement).]

General Conditions

General Conditions C. and D.

Comments were added to general conditions C and D. The comments state that the dates in the Title V boilerplates for the annual compliance certification and semiannual deviations reporting are recommended dates. The regions may choose other dates at their discretion. The comment added to general condition C. is as stated below:

[The submission dates listed in this condition are recommended. Other dates may be inserted at the discretion of the region.]

The comment added to condition general condition D is as follows:

[The submission date listed in this condition is recommended. Another date may be inserted at the discretion of the region.]

General Condition F.:

The wording "after the malfunction is discovered" was added to General Conditions E. The additional wording makes this condition consistent with the regulations. The additional wording is underlined in the condition below. Also an optional citation was added to the end of the first part of this condition that can be used if a facility does not have any continuous monitoring systems. The optional citation is 9 VAC 5-20-180.

F. Failure/Malfunction Reporting

In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than four daytime business hours after the malfunction is discovered, notify the Director, XXXX Region by facsimile transmission, telephone or telegraph of such failure or malfunction and shall within two weeks provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not required to provide the written statement prescribed in this paragraph for facilities subject to the monitoring requirements of 9 VAC 5-40-40 and 9 VAC 5-50-40. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the Director, XXX Region.
[(9 VAC 5-20-180 C)]

General Condition J.

The requirements contained the previous condition J. are being shortened. The previous condition J implied that the listed changes are the only changes that could result in the need to modify a permit. A modification evaluation of a Title V permit, NSR, or SOP has to be done on a case by case basis. Also parts of the previous condition J were redundant with the reopening requirements listed in General Conditions V and R. The new condition is as stated below:

J. Permit Modification

A physical change in, or change in the method of operation of, this stationary source may be subject to permitting under State Regulations 9 VAC 5-80-50, 9 VAC 5-80-1100, 9 VAC 5-80-1790, or 9 VAC 5-80-2000 and may require a permit modification and/or revisions except as may be authorized in any approved alternative operating scenarios.
(9 VAC 5-80-190 and 9 VAC 5-80-260)

Statement of Basis

Comments on General Conditions

[J. Permit Modification

This general condition cites the sections that follow:

9 VAC 5-80-50 Applicability, Federal Operating Permit For Stationary Sources

9 VAC 5-80-190. Changes to Permits

9 VAC 5-80-260. Enforcement

9 VAC 5-80-1100. Applicability, Permits For New and Modified Stationary Sources

9 VAC 5-80-1790. Applicability, Permits For Major Stationary Sources and Modifications Located in Prevention of Significant Deterioration Areas

9 VAC 5-80-2000. Applicability, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas]

General Condition U.

Please check the Title V permit and statement of basis. The title of condition U should be "Malfunction as an Affirmative Defense". There is also a possibility that there is a redundant statement in the last two items of this condition. The redundant items are italicized below.

U. Malfunction as an Affirmative Defense

1. A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the requirements of paragraph 2 of this condition are met.
2. The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:
 - a. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
 - b. The permitted facility was at the time being properly operated.
 - c. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
 - d. The permittee notified the board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification shall include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. The notification may be delivered by electronic mail, facsimile transmission, telephone, or any other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9 VAC 5-80-110 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirement under 9 VAC 5-20-180 C.
3. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof. ~~The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any requirement applicable to the source.~~
4. *The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.*

(9 VAC 5-80-250)

General Condition V.

Please review condition V. Some confusion may exist concerning general Condition V. A previous memo contained a proposal to change this condition. It was decided not to change this condition. The only change is the addition of a regulatory citation. The additional citation is 9 VAC 5-80-190 C. This citation gives the Department the authority to reopen permits. The condition should be as follows:

V. Permit Revocation or Termination for Cause

A permit may be revoked or terminated prior to its expiration date if the owner knowingly makes material misstatements in the permit application or any amendments thereto or if the permittee violates, fails, neglects or refuses to comply with the terms or conditions of the permit, any applicable requirements, or the applicable provisions of 9 VAC 5 Chapter 80 Article 1. The Board may suspend, under such conditions and for such period of time as the Board may prescribe, any permit for any of the grounds for revocation or termination or for any other violations of these regulations.
(9 VAC 5-80-190 C and 9 VAC 5-80-260)

General Condition Y.

The Title V permit has to address asbestos requirements. The asbestos condition will only address generally applicable requirements. This condition does not address requirements relating to the use of asbestos in processing or manufacturing. Requirements related to asbestos used in manufacturing and processing must be addressed in the specific conditions of the Title V permit. Newer facilities may not contain any asbestos. In those cases this condition can be deleted. The following condition and comment are being added to the Title V template.

[The asbestos condition can be deleted if the facility states that it does not contain any asbestos.]

Y. Asbestos Requirements

The permittee shall comply with the requirements of National Emissions Standards for Hazardous Air Pollutants (40 CFR 61) Subpart M, National Emission Standards for Asbestos as it applies to the following: Standards for Demolition and Renovation (40 CFR 61.145), Standards for Insulating Materials (40 CFR 61.148), and Standards for Waste Disposal (40 CFR 61.150).
(9 VAC 5-60-70 and 9 VAC 5-80-110 A.1)

Statement of Basis

Comments on General Conditions

Y. Asbestos Requirements

The Virginia Department of Labor and Industry under Section 40.1-51.20 of the Code of Virginia also holds authority to enforce 40 CFR 61 subpart M, National Emission Standards for Asbestos.

[This general condition contains a citation from the Code of Federal Regulations as follows:
40 CFR 61.145, NESHAPs Subpart M. National Emissions Standards for Asbestos as it applies to demolition and renovation.
40 CFR 61.148, NESHAPs Subpart M. National Emissions Standards for Asbestos as it applies to insulating materials,
40 CFR 61.150, NESHAPs Subpart M. National Emissions Standards for Asbestos as it applies to waste disposal.]

[This general condition cites the regulatory sections that follow:
9 VAC 5-60-70. Designated Emissions Standards
9 VAC 5-80-110. Permit Content]

If you have any questions or suggestions e-mail me or call 804-698-4016.